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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,088	01/04/2002	Paul F. Rodney	5080.102	4750

7590

12/24/2003

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EXAMINER

MCCLOUD, RENATA D

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 12/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,088

Applicant(s)

RODNEY, PAUL F.

Examiner

Renata McCloud

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AW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Response to Amendment

1. In response to the amendment filed 22 September 2003, paper number 8, the following has occurred:

(a) Claims 30-38 and 41-43 have been amended

(b) The 35 U.S.C. 112 rejections have been withdrawn by the examiner due to the changes made by the applicant

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 30-43 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Patent No. 5,886,303 in view of Maki Jr. U.S. 5,467,320.

Claim 30: Claim 1 of '303 teaches the limitations of claim 30 except for more than one noise sensor.

Claim 33: Claim 4 of '303 teaches the limitations of claim 33 except for more than one noise sensor.

Claim 36: Claim 7 of '303 teaches the limitations of claim 36 except for more than one noise sensor.

Claim 41: Claim 12 of '303 teaches the limitations of claim 41 except for more than one noise sensor.

Maki Jr. teaches an acoustic borehole apparatus having more than one noise sensor (Fig. 1: 22, 24; Col. 1. 5-10 teaches the acoustic source being measured is noise). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus taught by U.S. 5,886,303, to use more than one noise sensors as taught by Maki Jr. et al. The advantage of this would be the ability to measure noise propagating along a wellbore and through the drill collar due to being able to place sensors in more than one location.

Claim 31: '303 and Maki Jr. teach the limitations of claim 30. Referring to claim 31, claim 2 of '303 teaches the limitations of claim 31.

Claim 32: '303 and Maki Jr. teach the limitations of claim 30. Referring to claim 32, claim 2 of '303 teaches the limitations of claim 32.

Claim 34: '303 and Maki Jr. teach the limitations of claim 33. Referring to claim 34, claim 5 of '303 teaches the limitations of claim 34.

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Claim 35: '303 and Maki Jr. teach the limitations of claim 33. Referring to claim 35, claim 6 of '303 teaches all of the limitations of claim 35.

Claim 37: '303 and Maki Jr. teach the limitations of claim 36. Referring to claim 37, claim 8 of '303 teaches the limitations of claim 37.

Claim 38: '303 and Maki Jr. teach the limitations of claim 36. Referring to claim 38, claim 9 of '303 teaches the limitations of claim 38.

Claim 39: '303 and Maki Jr. teach the limitations of claim 36. Referring to claim 39, claim 10 of '303 teaches the limitations of claim 39.

Claim 40: '303 and Maki Jr. teach the limitations of claim 40. Referring to claim 40, claim 11 of 303 teaches the limitations of claim 40.

Claim 42: '303 and Maki Jr. teach the limitations of claim 41. Referring to claim 42, claim 13 of '303 teaches the limitations of claim 42.

Claim 43: '303 and Maki Jr. teach the limitations of claim 41. Referring to claim 43, claim 14 of '303 teaches the limitations of claim 43.

Response to Arguments

4. Applicant's arguments with respect to claims 30-43 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Renata McCloud whose telephone number is (703) 308-1763. The examiner can normally be reached on Mon.- Fri. from 8 am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi can be reached on (703) 308-3370. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9318.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Renata McCloud
Examiner
Art Unit 2837

RDM


ROBERT NAPPI
SUPERVISORY PATENT EXAMINER